

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI, ex rel.)	
TRACI STUBBLEFIELD,)	
)	
Appellant-Relator)	
)	
vs.)	Cause No. SC83858
)	
HON. CAROL KENNEDY BADER,)	
Juvenile Judge of the Twenty-Third)	
Judicial Circuit of Missouri,)	
)	
Respondent)	

**REPLY BRIEF OF RELATOR
IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION**

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**REPLY BRIEF OF RELATOR
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REPLY ARGUMENT

Under Missouri Supreme Court Rule 126.01 the Application for Change of Judge must be made within five (5) days of the setting for trial.

By definition a “trial” is an event at which each party is allowed to present a case. The Juvenile Office made no offer to present evidence on April 30, 2001, and the Court did not make itself available to hear any. Relator was not permitted to present evidence. By Respondent’s own admission, “in the interest of expediting her docket and avoiding inconvenience to multiple witnesses”, the contested case was set for a later date. (Respondent’s Brief Page 14). The forms produced by the court demonstrate that her action on April 30, 2001 was the standard practice, and that any time a party wishes to contest a petition, the case is set for trial at a later date. (Ex. B.) In establishing this

practice, the court has established that the “First Hearing” date set forth on the summons is not a trial setting, it is merely an announcement date. If on the date set forth on the summons, the outcome is either a default judgment, a consent judgment, or a setting of the contested case, then this is an announcement date and not a trial setting.

Respondent asserts that the five (5) day period for change of judge should be calculated from the date the summons was issued. (Respondent’s Brief, Page 11). In this scenario, a litigant who did not receive her summons until the seventh day would then be out of time to request the change. This scenario would not be in keeping with the liberal rule the Missouri Courts follow in construing the right to disqualify a judge. *See State ex rel. Horton v. House*, 646 S.W.2d 91, 93 (Mo. Banc. 1983). Further, the Respondent cites an inapplicable case in support of such an interpretation of the rule, namely *In the Interest of M.S.M.*, 666 S.W.2d 800, 804 (Mo. App. W. D. 1984). At the time that case was decided, juvenile cases were governed by Rule 51.05, which in 1984 provided that the application for change of judge must be made within 30 days or within five (5) days after a trial setting date, whichever is later. This is not the rule currently being applied. Applying the current rule, the Respondent’s position would create a situation in which it is exceedingly difficult, if not impossible for a litigant to exercise the right to change of judge guaranteed under Missouri Law.

Respondent also attempts to support her position by citing a Termination of Parental Rights case (which is a different type of proceeding), and in which the date set was actually the date the matter was to be tried, and the trial actually occurred on that date. *In the Interest of W.S.M.*, 845 S.W.2d 147 (Mo. App. W. D. 1993). Obviously, the

factual scenario is clearly different. Even so, under the plain reading of Rule 126.01, if the parties had shown up at the “hearing date”, and a new date was provided for trial, the litigants would have had five (5) days to request a change of judge. This is particularly true if the Rule is liberally construed as mandated by all Missouri Case Law.

Respondent argues that Missouri Supreme Court Rule 128.15 makes the setting of the contested case at a date later than set forth on the summons discretionary to the judge. (Respondent’s Brief, Page 12). The setting of the date for trial is always at the court’s discretion. This argument does not establish that the date set forth on the summons is a trial setting. As earlier stated, the court has made it her practice to set all contested cases on a later date than that set forth on the summons. (Ex. B.) Her practice has essentially made the date set forth on the summons an announcement date. Further, based on the plain reading of Rule 126.01, the judge setting the case for a contested trial starts the five (5) day period, and no other event does. Rule 128.15 changes nothing in that respect.

Missouri Supreme Court Rule 119.01 requires that “as soon as practicable after the petition is filed, the date for hearing to *adjudicate* the petition shall be set” (emphasis added). In Jefferson County, however, the date set forth on the summons is never the date on which the matters are adjudicated, as the court never hears evidence or makes a determination based on the facts. The judge has indicated, through her practice as previously set forth, that it is not practical for her to set the trial until the appearance of the parties on the date set forth on the summons. As such, in any contested case, the matter will not be set for adjudication until the appearance of the parties at the announcement date. Then, and only then, is the case set for trial. Again, under the plain

reading of Rule 126.01, the litigants have five (5) days from the date the case is set for trial to request a change of judge.

CONCLUSION

Respondent erred in denying Relator's application for Change of Judge in that it was timely filed. In looking at the facts of this case, the trial setting did not occur until April 30, 2001. As such, by denying Relator's timely filed application, Respondent exceeded her judicial authority. Relator requests that the court make the preliminary order of prohibition a permanent writ of prohibition.

Respectfully submitted,

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By _____
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AFFIDAVIT OF SERVICE OF RESPONDENT'S BRIEF

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

 BIANCA L. EDEN, being first duly sworn, does state the on the 7th day of November, 2001, two (2) copies on paper and one (1) copy on disk of the foregoing Relator's Reply were mailed by United State, Mail, postage prepaid to:

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Subscribed and sworn to before me this 7th day of November, 2001.

Kathryn L. Murphy - Notary Public

AFFIDAVIT OF COMPLIANCE

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

BIANCA L. EDEN, being first duly sworn, does state as follows:

1. That the Relator's Reply Brief In Support of Petition for Writ of Prohibition complies with the limitations set forth in Missouri Supreme Court Rule 84.06(b);
2. That the number of words in the Relator's Reply Brief In Support of Petition for Writ of Prohibition is 1,102;
3. That the disk of the Relator's Reply Brief In Support of Petition for Writ of Prohibition has been scanned for virus and is virus-free.

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Subscribed and sworn to before me this ____ day of _____, 2001.

Kathryn L. Murphy - Notary Public